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**INDIGENOUS PEOPLE AND CANADIAN COURTS:
ADVOCACY, EVIDENTIARY AND ETHICAL ISSUES**

LAW476H1F

UNIVERSITY OF TORONTO, FACULTY OF LAW

2017-2018 Academic Year

Instructor: Katherine Hensel

CASEBOOK

(VOLUME II of II)

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Indigenous People and Canadian Courts: Advocacy, Evidentiary and Ethical Issues
(LAW476H1F)

Week 1: September 11 – Introduction and Overview

Readings:

Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada – Preface (pages V – VI); Introduction (pages 1 – 22); The Legacy (pages 135 – 182) (for both Week 1 and Week 2)

Week 2: September 15 (Friday – deemed Monday) – Context

Readings:

United Nations Declaration on the Rights of Indigenous Peoples

TRC 94 Calls to Action

Week 3: September 18 – Litigating Aboriginal and Treaty Rights Cases (s. 35)

Readings:

Darlene Johnston, “Lo, How Sparrow Has Fallen: A Retrospective of the Supreme Court of Canada's Section 35 Jurisprudence” (2005) in Julia Bass, W. A. Bogart & Frederick Zemans, eds., *Access to Justice for a New Century: The Way Forward*, Toronto: Law Society of Upper Canada, pp. 197-248 (To be distributed)

Woodward & Company, *Tsilhqot'in Nation v British Columbia and Canada*, webpage, available online:

http://www.woodwardandcompany.com/?page_id=87.

Week 4: September 25 – Evidentiary Issues (Part I)

Readings:

Mitchell v. M.N.R., [2001] 1 SCR 911 (focus on paras 1 – 65)

Week 5: October 2 – Evidentiary Issues (Part II – Oral Evidence)

Readings:

Evidentiary issues—oral tradition evidence (Continuing Legal Education Society of British Columbia)

Mitchell v. M.N.R., [2001] 1 SCR 911 (paras 27 – 40)

R v Delgamuukw, [1997] 3 SCR 1010 (headnote; paras 1 – 14, 78 – 108)

Xeni Gwet'in First Nations v. British Columbia, 2007 BCSC 1700 (paras 131 – 196) (*Tsilhqot'in* Trial Decision)

Week 6: October 16 – Criminal Justice

Readings:

TRC Report – Volume 5, Chapter 5: A denial of justice (pages 218 – 256)

R v Gladue, [1999] 1 SCR 688

R v Ipeelee, [2012] 1 SCR 433 (headnote; paras 80 – 87)

R v Anderson, 2014 SCC 41

R v Armitage, 2015 ONCJ 64

R v Pelletier, 2016 ONCJ 628

Week 7: October 23 – Child Welfare

Readings:

TRC Report – Volume 5, Chapter 1: Child Welfare: A system in Crisis (pages 11 – 60)

Richard, Kenn, Chapter 9: On the Matter of Cross-Cultural Aboriginal Adoptions, Putting a Human Face on Child Welfare, 2007, Chapter 9, pp 189 – 202

Saskatchewan v STC Health & Family Services Inc, 2016 SKQB 236

Week 8: October 30 – Public Inquiries and Coroner’s Inquests (Part I – Sampson Inquiry; Ipperwash Inquiry)

Readings:

Sampson Inquiry

Ipperwash Inquiry – Executive Summary (pages 1 – 77)

Week 9: November 13 – Public Inquiries and Coroner’s Inquests (Part II – Missing and Murdered Indigenous Women)

Readings:

TRC Report – Volume 5 – Legacy (Overrepresentation of Aboriginal People among victims of crime – pages 257 – 269)

Oppal Inquiry: The Missing Women Commission of Inquiry (Executive Summary – pages 4 – 22; 108 - 112)

RCMP Report – Missing and Murdered Aboriginal Women: A National Operational Overview

Tracey Lindberg, “Violence Against Indigenous Women and the Case of Cindy Gladue” (March 30, 2015)

Week 10: November 20 – Access to Justice and Advanced Costs

Readings:

United Nations Human Rights Council, “Access to justice in the promotion and protection of the rights of indigenous peoples”

R v Sayers, 2017 ONCJ 77

Week 11: November 27 – Indigenous Law

Readings:

TRC Report – Volume 6, Chapter 2: Indigenous law: Truth, reconciliation, and access to justice (pages 45 – 79)

Christie, Gordon, "Culture, Self-Determination and Colonialism: Issues Around the Revitalization of Indigenous Legal Traditions", *Indigenous Law Journal*, Volume 6, Issue 1

Borrows, John, *Canada's Indigenous Constitution* (2010) (Chapters 1 and 6 – pages 1 – 22; 137 – 176) (To be distributed)

Napoleon, Val and Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions Through Stories" (2016) *McGill LJ* 61:4

Week 12: December 4 – Role of the Legal Profession and Conclusion

Readings:

TRC 94 Calls to Action

Indigenous People and Canadian Courts: Advocacy, Evidentiary and Ethical Issues
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	Page
VOLUME I	
Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada – Preface (pages V – VI); Introduction (pages 1 – 22); The Legacy (pages 135 – 182)	1
<i>United Nations Declaration on the Rights of Indigenous Peoples</i>	73
TRC 94 Calls to Action	91
<i>Mitchell v. M.N.R.</i> , [2001] 1 SCR 911	105
Evidentiary issues—oral tradition evidence (Continuing Legal Education Society of British Columbia)	191
<i>R v Delgamuukw</i> , [1997] 3 SCR 1010 (headnote; paras 1 – 14, 78 – 108)	207
<i>Xeni Gwet'in First Nations v. British Columbia</i> , 2007 BCSC 1700 (paras 131 – 196)	245
TRC Report – Volume 5, Chapter 5: A denial of justice (pages 218 – 256)	271
<i>R v Gladue</i> , [1999] 1 SCR 688	311
<i>R v Ipeelee</i> , [2012] 1 SCR 433 (headnote; paras 80 – 87)	365
<i>R v Anderson</i> , 2014 SCC 41	379
<i>R v Armitage</i> , 2015 ONCJ 64	409
<i>R v Pelletier</i> , 2016 ONCJ 628	423
VOLUME II	
TRC Report – Volume 5, Chapter 1: Child Welfare: A system in Crisis (pages 11 – 60)	431
Richard, Kenn, Chapter 9: On the Matter of Cross-Cultural Aboriginal Adoptions, Putting a Human Face on Child Welfare, 2007, Chapter 9, pp 189 – 202	481
<i>Saskatchewan v STC Health & Family Services Inc</i> , 2016 SKQB 236	495

Sampson Inquiry	545
Ipperwash Inquiry – Executive Summary (pages 1 – 77)	569
TRC Report – Volume 5 – Legacy (Overrepresentation of Aboriginal People among victims of crime – pages 257 – 269)	647
Oppal Inquiry: The Missing Women Commission of Inquiry (Executive Summary – pages 4 – 22; 108 - 112)	661
RCMP Report – Missing and Murdered Aboriginal Women: A National Operational Overview	687
Tracey Lindberg, “Violence Against Indigenous Women and the Case of Cindy Gladue” (March 30, 2015)	707
United Nations Human Rights Council, “Access to justice in the promotion and protection of the rights of indigenous peoples”	709
<i>R v Sayers</i> , 2017 ONCJ 77	733
TRC Report – Volume 6, Chapter 2: Indigenous law: Truth, reconciliation, and access to justice (pages 45 – 79)	763
Christie, Gordon, “Culture, Self-Determination and Colonialism: Issues Around the Revitalization of Indigenous Legal Traditions”, <i>Indigenous Law Journal</i> , Volume 6, Issue 1	799
Napoleon, Val and Hadley Friedland, “An Inside Job: Engaging with Indigenous Legal Traditions Through Stories” (2016) <i>McGill LJ</i> 61:4	817